

Bill no.:	1111 H.R. 5
Amendment no.:	1a
Date offered:	3/4/03
Disposition:	Not agreed to by 9 yeas and 16 nays

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5**

OFFERED BY MR. DINGELL

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Medical Malpractice
3 Reform Act of 2003”.

4 **TITLE I—TORT REFORM RE-**
5 **GARDING MEDICAL MAL-**
6 **PRACTICE**

7 **Subtitle A—Medical Malpractice**
8 **Litigation Reform**

9 **SEC. 101. STATUTE OF LIMITATIONS.**

10 (a) IN GENERAL.—In any State or Federal court, a
11 medical malpractice action shall be barred unless the com-
12 plaint is filed within 3 years after the right of action ac-
13 crues.

14 (b) ACCRUAL.—A right of action referred to in sub-
15 section (a) accrues upon the last to occur of the following
16 dates:

17 (1) The date of the injury.

1 (2) The date on which the claimant discovers,
2 or through the use of reasonable diligence should
3 have discovered, the injury.

4 (3) The date on which the claimant became 18
5 years of age.

6 (c) APPLICABILITY.—This section shall apply to any
7 injury occurring after the date of the enactment of this
8 Act.

9 **SEC. 102. ATTORNEY CERTIFICATE OF MERIT.**

10 (a) IN GENERAL.—In any State or Federal court, a
11 medical malpractice action shall be dismissed unless the
12 attorney or unrepresented party presenting the complaint
13 certifies that, to the best of the person's knowledge, infor-
14 mation, and belief, formed after an inquiry reasonable
15 under the circumstances,—

16 (1) it is not being presented for any improper
17 purpose, such as to harass or to cause unnecessary
18 delay or needless increase in the cost of litigation;

19 (2) the claims and other legal contentions
20 therein are warranted by existing law or by a non-
21 frivolous argument for the extension, modification,
22 or reversal of existing law or the establishment of
23 new law; and

24 (3) the allegations and other factual contentions
25 have evidentiary support or, if specifically so identi-

1 fied, are likely to have evidentiary support after a
2 reasonable opportunity for further investigation and
3 discovery.

4 (b) SANCTIONS.—If, after notice and a reasonable op-
5 portunity to respond, the court determines that a person,
6 in certifying under subsection (a), has violated that sub-
7 section, the court shall impose an appropriate sanction
8 upon the attorneys, law firms, or parties that have violated
9 that subsection or are responsible for the violation. Any
10 sanction or relief available under Rule 11 of the Federal
11 Rules of Civil Procedure shall be available under this sec-
12 tion.

13 (c) COORDINATION WITH OTHER SANCTIONS.—A
14 sanction imposed under this section shall be in addition
15 to any other sanction available under any other law.

16 (d) APPLICABILITY.—This section shall apply to any
17 complaint filed after the date of the enactment of this Act.

18 **SEC. 103. LIMITATION ON PUNITIVE DAMAGES.**

19 (a) IN GENERAL.—In any State or Federal court, pu-
20 nitive damages may not be awarded on a medical mal-
21 practice action, except upon proof of—

22 (1) gross negligence;

23 (2) reckless indifference to life; or

24 (3) an intentional act, such as voluntary intoxi-
25 cation or impairment by a physician, sexual abuse or

1 misconduct, assault and battery, or falsification of
2 records.

3 (b) ALLOCATION.—In such a case, the award of puni-
4 tive damages shall be allocated 50 percent to the claimant
5 and 50 percent to a trustee appointed by the court, to
6 be used by such trustee in the manner specified in subtitle
7 B. The court shall appoint the Secretary of Health and
8 Human Services as such trustee.

9 (c) EXCEPTION.—This subsection shall not apply
10 with respect to an action if the applicable State law pro-
11 vides (or has been construed to provide) for damages in
12 such an action that are only punitive or exemplary in na-
13 ture.

14 **SEC. 104. REDUCTION IN PREMIUMS PAID BY PHYSICIANS**
15 **FOR MEDICAL MALPRACTICE INSURANCE**
16 **COVERAGE.**

17 (a) IN GENERAL.—Not later than 180 days after the
18 date of the enactment of this Act, each medical mal-
19 practice liability insurance company shall—

20 (1) develop a reasonable estimate of the annual
21 amount of financial savings that will be achieved by
22 the company as a result of this subtitle;

23 (2) develop and implement a plan to annually
24 dedicate at least 50 percent of such annual savings
25 to reduce the amount of premiums that the company

1 charges physicians for medical malpractice liability
2 coverage; and

3 (3) submit to the Secretary of Health and
4 Human Services (referred to in this section as the
5 “Secretary”) a written certification that the com-
6 pany has complied with paragraphs (1) and (2).

7 (b) REPORTS.—Not later than one year after the date
8 of the enactment of this Act and annually thereafter, each
9 medical malpractice liability insurance company shall sub-
10 mit to the Secretary a report that identifies the percentage
11 by which the company has reduced medical malpractice
12 coverage premiums relative to the date of the enactment
13 of this Act.

14 (c) ENFORCEMENT.—A medical malpractice liability
15 insurance company that violates a provision of this section
16 is liable to the United States for a civil penalty in an
17 amount assessed by the Secretary, not to exceed \$11,000
18 for each such violation. The provisions of paragraphs (3)
19 through (5) of section 303(g) of the Federal Food, Drug,
20 and Cosmetic Act apply to such a civil penalty to the same
21 extent and in the same manner as such paragraphs apply
22 to a civil penalty under such section.

23 (d) DEFINITION.—For purposes of this section, the
24 term “medical malpractice liability insurance company”
25 means an entity in the business of providing an insurance

1 policy under which the entity makes payment in settlement
2 (or partial settlement) of, or in satisfaction of a judgment
3 in, a medical malpractice action or claim.

4 **SEC. 105. DEFINITIONS.**

5 In this subtitle:

6 (1) The term “State” means each of the several
7 States, the District of Columbia, the Commonwealth
8 of Puerto Rico, American Samoa, Guam, the Com-
9 monwealth of the Northern Mariana Islands, the
10 Virgin Islands, and any other territory or possession
11 of the United States.

12 (2) The term “medical malpractice action”
13 means an action against a physician, or other health
14 professional, who is licensed in accordance with the
15 requirements of the State involved that—

16 (A) arises under the law of the State in-
17 volved;

18 (B) alleges the failure of such physician or
19 other health professional to adhere to the rel-
20 evant professional standard of care for the serv-
21 ice and specialty involved;

22 (C) alleges death or injury proximately
23 caused by such failure; and

1 (D) seeks monetary damages, whether
2 compensatory or punitive, as relief for such
3 death or injury.

4 **Subtitle B—Use of Amounts Recov-**
5 **ered as Punitive Damages in**
6 **Medical Malpractice Actions**

7 **SEC. 121. AMOUNTS COVERED.**

8 (a) IN GENERAL.—This subtitle applies to amounts
9 allocated to the Secretary of Health and Human Services
10 as trustee under section 103.

11 (c) AVAILABILITY.—Such amounts shall be available
12 for use by the Secretary of Health and Human Services
13 under section 122 and shall remain so available until ex-
14 pended.

15 **SEC. 122. USE OF AMOUNTS.**

16 (a) IN GENERAL.—Subject to subsection (b), the Sec-
17 retary of Health and Human Services, acting through the
18 Director of the Agency for Healthcare Research and Qual-
19 ity, shall use the amounts to which this subtitle applies
20 for activities to reduce medical errors and improve patient
21 safety.

22 (b) NO FUNDS FOR MANDATORY REPORTING SYS-
23 TEM.—The Secretary of Health and Human Services may
24 not use any part of such amounts to establish or maintain

1 any system that requires mandatory reporting of medical
2 errors.

3 (c) REGULATIONS.—The Secretary of Health and
4 Human Services shall promulgate regulations to establish
5 programs and procedures for carrying out this section.

6 **SEC. 123. INVESTMENT.**

7 (a) IN GENERAL.—The Secretary of Health and
8 Human Services shall invest the amounts to which this
9 subtitle applies in such amounts as such Secretary deter-
10 mines are not required to meet current withdrawals. Such
11 investments may be made only in interest-bearing obliga-
12 tions of the United States. For such purpose, such obliga-
13 tions may be acquired on original issue at the issue price,
14 or by purchase of outstanding obligations at the market
15 price.

16 (b) SALE OF OBLIGATIONS.—Any obligation acquired
17 by the Secretary in such Secretary's capacity as trustee
18 of such amounts may be sold by the Secretary at the mar-
19 ket price.

20 **TITLE II—INDEPENDENT ADVI-**
21 **SORY COMMISSION ON MED-**
22 **ICAL MALPRACTICE INSUR-**
23 **ANCE**

24 **SEC. 201. ESTABLISHMENT.**

25 (a) FINDINGS.—The Congress finds as follows:

1 (1) The sudden rise in medical malpractice pre-
2 miums in regions of the United States can threaten
3 patient access to doctors and other health providers.

4 (2) Improving patient access to doctors and
5 other health providers is a national priority.

6 (b) ESTABLISHMENT.—There is established a na-
7 tional commission to be known as the “Independent Advi-
8 sory Commission on Medical Malpractice Insurance” (in
9 this title referred to as the “Commission”).

10 **SEC. 202. DUTIES.**

11 (a) IN GENERAL.—The Commission shall evaluate
12 the causes and scope of the recent and dramatic increases
13 in medical malpractice insurance premiums and formulate
14 additional proposals to reduce such medical malpractice
15 premiums and make recommendations to avoid any dra-
16 matic increases in medical malpractice premiums in the
17 future, in light of proposals for tort reform regarding med-
18 ical malpractice.

19 (b) CONSIDERATIONS.—In formulating proposals
20 under this section, the Commission shall, at a minimum,
21 consider the following:

22 (1) Alternatives to the current medical mal-
23 practice tort system that would ensure adequate
24 compensation for patients, preserve access to pro-
25 viders, and improve health care safety and quality.

1 (2) The effect of Federal laws on the pricing of
2 medical malpractice insurance.

3 (3) Modifications of, and alternatives to, the ex-
4 isting State and Federal regulations and oversight
5 that affect, or could affect, medical malpractice lines
6 of insurance.

7 (4) State and Federal reforms that would dis-
8 tribute the risk of medical malpractice more equi-
9 tably among health care providers.

10 (5) State and Federal reforms that would more
11 evenly distribute the risk of medical malpractice
12 across various categories of providers.

13 (6) The effect of a Federal medical malpractice
14 reinsurance program administered by the Depart-
15 ment of Health and Human Services.

16 (7) Programs that would reduce medical errors
17 and increase patient safety, including new innova-
18 tions in technology and management.

19 **SEC. 203. REPORT.**

20 (a) IN GENERAL.—The Commission shall transmit to
21 Congress—

22 (1) an initial report not later than 180 days
23 after the date of the initial meeting of the Commis-
24 sion; and

1 (2) a report not less than each year thereafter
2 until the Commission terminates.

3 (b) CONTENTS.—Each report transmitted under this
4 section shall contain a detailed statement of the findings
5 and conclusions of the Commission, including proposals
6 for addressing the current dramatic increases in medical
7 malpractice insurance rates and recommendations for
8 avoiding any such dramatic increases in the future.

9 (c) VOTING AND REPORTING REQUIREMENTS.—With
10 respect to each proposal or recommendation contained in
11 the report submitted under subsection (a), each member
12 of the Commission shall vote on the proposal or rec-
13 ommendation, and the Commission shall include, by mem-
14 ber, the results of that vote in the report.

15 **SEC. 204. MEMBERSHIP.**

16 (a) NUMBER AND APPOINTMENT.—The Commission
17 shall be composed of 15 members appointed by the Compt-
18 roller General of the United States.

19 (b) MEMBERSHIP.—

20 (1) IN GENERAL.—The membership of the
21 Commission shall include individuals with national
22 recognition for their expertise in health finance and
23 economics, actuarial science, medical malpractice in-
24 surance, insurance regulation, health care law,
25 health care policy, health care access, allopathic and

1 osteopathic physicians, other providers of health care
2 services, patient advocacy, and other related fields,
3 who provide a mix of different professionals, broad
4 geographic representations, and a balance between
5 urban and rural representatives.

6 (2) INCLUSION.—The membership of the Com-
7 mission shall include the following:

8 (A) Two individuals with expertise in
9 health finance and economics, including one
10 with expertise in consumer protections in the
11 area of health finance and economics.

12 (B) Two individuals with expertise in med-
13 ical malpractice insurance, representing both
14 commercial insurance carriers and physician-
15 sponsored insurance carriers.

16 (C) An individual with expertise in State
17 insurance regulation and State insurance mar-
18 kets.

19 (D) An individual representing physicians.

20 (E) An individual with expertise in issues
21 affecting hospitals, nursing homes, nurses, and
22 other providers.

23 (F) Two individuals representing patient
24 interests.

1 (G) Two individuals with expertise in
2 health care law or health care policy.

3 (H) An individual with expertise in rep-
4 resenting patients in malpractice lawsuits.

5 (3) MAJORITY.—The total number of individ-
6 uals who are directly involved with the provision or
7 management of malpractice insurance, representing
8 physicians or other providers, or representing physi-
9 cians or other providers in malpractice lawsuits,
10 shall not constitute a majority of the membership of
11 the Commission.

12 (4) ETHICAL DISCLOSURE.—The Comptroller
13 General of the United States shall establish a system
14 for public disclosure by members of the Commission
15 of financial or other potential conflicts of interest re-
16 lating to such members.

17 (c) TERMS.—

18 (1) IN GENERAL.—The terms of the members
19 of the Commission shall be for 3 years except that
20 the Comptroller General of the United States shall
21 designate staggered terms for the members first ap-
22 pointed.

23 (2) VACANCIES.—Any member appointed to fill
24 a vacancy occurring before the expiration of the
25 term for which the member's predecessor was ap-

1 pointed shall be appointed only for the remainder of
2 that term. A member may serve after the expiration
3 of that member's term until a successor has taken
4 office. A vacancy in the Commission shall be filled
5 in the manner in which the original appointment was
6 made.

7 (3) COMPENSATION.—Members of the Commis-
8 sion shall be compensated in accordance with section
9 1805(c)(4) of the Social Security Act.

10 (4) CHAIRMAN; VICE CHAIRMAN.—The Comp-
11 troller General of the United States shall designate
12 at the time of appointment a member of the Com-
13 mission as Chairman and a member as Vice Chair-
14 man. In the case of vacancy of the Chairmanship or
15 Vice Chairmanship, the Comptroller General may
16 designate another member for the remainder of that
17 member's term.

18 (5) MEETINGS.—

19 (A) IN GENERAL.—The Commission shall
20 meet at the call of the Chairman.

21 (B) INITIAL MEETING.—The Commission
22 shall hold an initial meeting not later than the
23 date that is 1 year after the date of the enact-
24 ment of this title, or the date that is 3 months

1 after the appointment of all the members of the
2 Commission, whichever occurs earlier.

3 **SEC. 205. DIRECTOR AND STAFF; EXPERTS AND CONSULT-**
4 **ANTS.**

5 Subject to such review as the Comptroller General of
6 the United States deems necessary to assure the efficient
7 administration of the Commission, the Commission may—

8 (1) employ and fix the compensation of an Ex-
9 ecutive Director (subject to the approval of the
10 Comptroller General) and such other personnel as
11 may be necessary to carry out its duties (without re-
12 gard to the provisions of title 5, United States Code,
13 governing appointments in the competitive service);

14 (2) seek such assistance and support as may be
15 required in the performance of its duties from ap-
16 propriate Federal departments and agencies;

17 (3) enter into contracts or make other arrange-
18 ments, as may be necessary for the conduct of the
19 work of the Commission (without regard to section
20 3709 of the Revised Statutes (41 U.S.C. 5));

21 (4) make advance, progress, and other pay-
22 ments which relate to the work of the Commission;

23 (5) provide transportation and subsistence for
24 persons serving without compensation; and

1 (6) prescribe such rules and regulations as it
2 deems necessary with respect to the internal organi-
3 zation and operation of the Commission.

4 **SEC. 206. POWERS.**

5 (a) OBTAINING OFFICIAL DATA.—The Commission
6 may secure directly from any department or agency of the
7 United States information necessary to enable it to carry
8 out this section. Upon request of the Chairman, the head
9 of that department or agency shall furnish that informa-
10 tion to the Commission on an agreed upon schedule.

11 (b) DATA COLLECTION.—In order to carry out its
12 functions, the Commission shall—

13 (1) utilize existing information, both published
14 and unpublished, where possible, collected and as-
15 sessed either by its own staff or under other ar-
16 rangements made in accordance with this section;

17 (2) carry out, or award grants or contracts for,
18 original research and experimentation, where exist-
19 ing information is inadequate; and

20 (3) adopt procedures allowing any interested
21 party to submit information for the Commission's
22 use in making reports and recommendations.

23 (c) ACCESS OF GENERAL ACCOUNTING OFFICE TO
24 INFORMATION.—The Comptroller General of the United
25 States shall have unrestricted access to all deliberations,

1 records, and nonproprietary data of the Commission, im-
2 mediately upon request.

3 (d) PERIODIC AUDIT.—The Commission shall be sub-
4 ject to periodic audit by the Comptroller General of the
5 United States.

6 **SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) IN GENERAL.—There are authorized to be appro-
8 priated such sums as may be necessary to carry out this
9 title for each of fiscal years 2004 through 2008.

10 (b) REQUESTS FOR APPROPRIATIONS.—The Commis-
11 sion shall submit requests for appropriations in the same
12 manner as the Comptroller General of the United States
13 submits requests for appropriations, but amounts appro-
14 priated for the Commission shall be separate from
15 amounts appropriated for the Comptroller General.

16 **TITLE III—HEALTH PROVIDER**
17 **SHORTAGES RESULTING**
18 **FROM COSTS OF MEDICAL**
19 **MALPRACTICE INSURANCE**

20 **SEC. 301. GRANTS AND CONTRACTS REGARDING HEALTH**
21 **PROVIDER SHORTAGES.**

22 Subpart I of part D of title III of the Public Health
23 Service Act (42 U.S.C. 254b et seq.) is amended by adding
24 at the end the following section.

1 **"SEC. 330L. HEALTH PROVIDER SHORTAGES RESULTING**
2 **FROM COSTS OF MEDICAL MALPRACTICE IN-**
3 **SURANCE.**

4 “(a) IN GENERAL.—The Secretary, acting through
5 the Administrator of the Health Resources and Services
6 Administration, may make awards of grants or contracts
7 in accordance with this section for geographic areas that,
8 as determined by the Secretary, have a shortage of one
9 or more types of health providers as a result of the pro-
10 viders making the decision to cease or curtail providing
11 health services in the geographic areas because of the costs
12 of maintaining malpractice insurance.

13 “(b) RECIPIENTS OF AWARDS; EXPENDITURE.—In
14 accordance with such criteria as the Secretary may estab-
15 lish:

16 “(1) Awards under subsection (a) may be made
17 to health providers who agree to provide health serv-
18 ices (or to continue providing health services, as the
19 case may be) in geographic areas described in such
20 subsection for the period during which payments
21 under the awards are made to the health providers.

22 “(2) Health providers who receive such awards
23 may expend the awards to assist the providers with
24 the costs of maintaining medical malpractice insur-
25 ance for providing health services in the geographic
26 area for which the award is made.

1 “(c) DEFINITION.—For purposes of this section, the
2 term ‘health providers’ means physicians and other health
3 professionals, and organizations that provide health serv-
4 ices (including hospitals, clinics, and group practices), that
5 meet applicable legal requirements to provide the health
6 services involved.”.

7 **SEC. 302. HEALTH PROFESSIONAL ASSIGNMENTS TO TRAU-**
8 **MA CENTERS THROUGH NATIONAL HEALTH**
9 **SERVICE CORPS.**

10 Section 338H of the Public Health Service Act (42
11 U.S.C. 254q) is amended by adding at the end the fol-
12 lowing subsection:

13 “(d) TRAUMA CENTERS; SEPARATE AUTHORIZATION
14 REGARDING SHORTAGES RESULTING FROM COSTS OF
15 MEDICAL MALPRACTICE INSURANCE.—

16 “(1) IN GENERAL.—For the purpose of assign-
17 ing Corps surgeons, obstetricians/gynecologists, and
18 other health professionals to trauma centers in
19 health professional shortage areas described in para-
20 graph (2), there are authorized to be appropriated
21 such sums as may be necessary for each of the fiscal
22 years 2003 through 2006. Such authorization is in
23 addition to any other authorization of appropriations
24 that is available for such purpose.

1 “(2) DESCRIPTION OF AREAS.—A health pro-
2 fessional shortage area referred to in paragraph (1)
3 is such an area in which, as determined by the Sec-
4 retary, a medical facility in the area has lost its des-
5 ignation as a trauma center or as a particular level
6 of trauma center, or is at significant risk of losing
7 such a designation, as a result of one or more sur-
8 geons, obstetricians/gynecologists, or other health
9 professionals making the decision to cease or curtail
10 practicing at the facility because of the costs of
11 maintaining malpractice insurance. For purposes of
12 paragraph (1), (A) the term ‘trauma center’ includes
13 such a medical facility; and (B) the Secretary may
14 adjust the criteria for designation as a health profes-
15 sional shortage area to the extent necessary to make
16 funds appropriated under paragraph (1) available
17 with respect to any medical facility to ensure that
18 the facility does not lose any such designation as a
19 result of such decisions by health professionals.”.